IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO.6 OF 2005
IN
CRIMINAL REVISION APPLICATION NO. 8 OF 2003.

M/s. Venus Steel, Products
through its Proprietor
Shri Jaime S. Lazaro,
major in age,
resident of House No. 901,
Bela Vista, Raia, Salcete, Goa. .... Applicant/
Petitioner.

Versus

1. Shri Michael Francis Pinheiro
(since deceased) through his
widow, married, resident of
Housae No. 49, Pinheiro Building,
Damodar Housing Society,
Aquem Alto, Margao, Goa.

2. S t a t e
(Through P.P.). .... Respondents.

Shri A. S. Salkar, Advocate for the Applicant/Petitioner.

Shri D. Pangam, Advocate for the Respondent No.1.

Shri S.N. Sardessai, Public Prosecutor for the Respondent No. 2.

CORAM: N. A. BRITTO, J.

DATE: 6th MAY, 2005.

ORAL JUDGMENT:

Heard Shri Salkar, the learned counsel on behalf of the

Applicant and Shri Pangam, the learned counsel on behalf of the Respondent No.1.

2. The applicant herein was accused in C.C. No. 207/N/96/F wherein he was convicted and sentenced under Section 138 of the Negotiable Instruments Act, 1881. The applicant having challenged the said conviction/sentence before the Sessions Court, the learned Addl. Sessions Judge by his Order dated 17.1.2003 upheld the conviction but modified the sentence, in that the learned Assistant Sessions Judge directed the applicant/accused to undergo 10 days S.I. and pay compensation of Rs.10,000/- in default, to undergo 10 days S.I.

3. The applicant filed a revision application before this Court, being Revision Application No.8/03. As none appeared before this Court on behalf of the applicant on 20.2.04, 12.04.04 and 20.4.04, this Court proceeded to dismiss the Revision Application for non-prosecution on 21.4.04.

4. The applicant has now invoked the jurisdiction of this Court under S.482 of the Code of Criminal Procedure, 1973 (Code, for short) and has prayed for restoration of his Revision Application which was dismissed for non-prosecution on 21.4.04. The applicant has also filed an

application for condonation of delay.

5. The point which requires consideration is whether an application for restoration of dismissal of Criminal Revision Application filed under S.397 of the Code, is maintainable.

6. Shri Salkar, the learned counsel on behalf of the applicant, has submitted that the order of dismissal of Criminal Revision Application can be set aside invoking the powers of this Court under S.482 of the Code and in support of the said submission, Shri Salkar has placed reliance on page 562 of A.I.R. Manual and on a Division Bench Judgment of Patna High Court in the case of ***Ramautar Thakur and others v. State of Bihar (A.I.R. 1957 Patna 33)***.

7. On the other hand, Shri Pangam, the learned counsel of the respondent No.1 has submitted that the power of restoration or review is not available to this Court on account of the specific bar created by Section 362 of the Code.

8. Section 362 of the Code reads as follows :-

" 362. **Court not to alter judgment.-** Save as otherwise provided by this Code or by any other law for the time being in force, no

Court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error. ”

9. Referring to Section 482 of the Code and to 1991 All Cri.C. 177 it is stated at page 562 (supra) that where the revision was dismissed in default at admission stage and the petitioner had no information of the transfer of the Revision to the Court of Special Judge, High Court in such circumstances can invoke inherent power to restore a revision application. The aforesaid observations do not show whether the dismissal of the revision application was by the High Court itself.

10. In the case of ***Ramautar Thakur and others*** (supra), the Division Bench rightly took note of the fact that there was no statutory provision for restoration of criminal revision application dismissed for default, but observed that the power to restore such a case could be referable to inherent power which is saved by the provisions of Section 561-A (now Section 482 of the Code). The Division Bench further observed that Section 369 did not apply to an order passed by the High Court under Section 561-A to restore a criminal application in revision dismissed for default in appropriate cases, observing that an order of dismissal for default of a criminal revision application is not a judgment, but a mere

order and therefore Section 369 will not bar the inherent jurisdiction of the High Court to pass an order of restoration.

11. What has been stated by the Gauhati High Court at page 562 (supra) or the Division Bench of the Patna High Court does not seem to find favour with what the Hon'ble Supreme Court has stated in several decisions cited at the Bar by Shri Pangam.

12. It is to be noted that the language of Section 369 of the old Code and Section 362 of the new Code differ in certain aspects and Section 362 of the new Code speaks of not only of judgments, but also of final order which can be reviewed only for the purposes of correcting clerical or arithmetical error. As far as the order dated 21.4.04 is concerned, there can be no dispute that it is a final order dismissing the revision petition.

13. In the case of ***Sankatha Singh and others v. State of Uttar Pradesh (A.I.R. 1962 S.C. 1208)*** the Supreme Court stated that the Sessions Judge could not pass the order of re-hearing of the appeal (which was dismissed for default), in exercise of powers under Section 369 r/w Section 424 of the Code because a specific prohibition regarding altering or reviewing of its order by Court. The Court further observed that inherent powers cannot be exercised to do what the court specifically

prohibits the court from doing.

14. In the case of ***State of Orissa v. Ram Chander Agarwala (A.I.R. 1979 S.C. 87)*** the Supreme Court referring to 561A of the old Code and stated that inherent power cannot relate to any of the matters specifically dealt with by the Code and that it would follow that inherent powers cannot be invoked to exercise powers which would be inconsistent with any of the specific provisions of the Code. The saving of inherent power is only for giving effect to orders passed under the Code, to prevent abuse of the process of any court or otherwise to secure the ends of justice. The Supreme Court further stated that if Section 369 (old) of the Code is understood as applying to judgments on appeal by the High Court, Section 561-A cannot be invoked for enabling the Court to review its own order which is specifically prohibited by Section 369 by providing that , no Court when it has signed the judgment, shall alter or review the same except to correct a clerical error. The Supreme Court referred to two if its earlier decisions namely ***Sankatha Singh v. State of U.P. (A.I.R. 1962 S.C. 1208)*** and the case of ***U.J.S. Chopra v. State of Bombay (A.I.R. 1955 S.C.633)*** and observed that once a judgment has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Cr.P.C. which would enable

the High Court to review the same or to exercise revisional jurisdiction. In the case of ***Smt. Sooraj Devi v. Pyare Lal and another (A.I.R. 1981 S.C. 736)*** the Supreme Court observed that inherent powers of the Court was not contemplated by saving provision in Section 362 of the Code.

15. In the case of ***Hari Singh Mann v. Harbhajan Singh Bajwa and others [(200) 1 S.C.C. 169]*** the Supreme Court referred to the said case of ***U.J.S. Chopra v. State of Bombay (A.I.R. 1955 S.C. 633)*** and stated that the said decision clearly laid down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code and the provisions of Section 561-A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code. The Supreme Court further observed that Section 362 of the Code mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order

disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error. The Supreme Court further observed that the new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment.

16. Again the case of ***R. Annapurna v. Ramadugu Anantha Krishna Sastry and others [(2002) 10 S.C.C. 401]*** the Supreme Court stated that the High Court has no power to recall or review its own order under Section 482 of the Code.

17. The applicant's application has been styled as an application for restoration. The concept of restoration is unknown to the Code of Criminal Procedure, 1973. The only remedy which might have been available to the applicant under the Code was either of recalling the order of dismissal or reviewing the same. As already stated, the Order dated 21.4.04 is a final order disposing of the criminal revision application filed by the applicant. The same cannot be recalled or review in view of the specific bar created by Section 362 of the Code and as held by the Hon'ble Supreme Court in the judgments referred to hereinabove.

18. Consequently Criminal Misc. Application No. 6/2005 as well as the application under Stamp No. 21/2005 has got to be dismissed as not maintainable.

19. Applications dismissed.

N. A. BRITTO, J.

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